

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 308 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

DAUDBHAI KASAMBHAI

Versus

SHABBIR ISUF YAKUB MEDA

Appearance:

MR PK JANI for Petitioner

NOTICE SERVED for Respondent No. 1

MR MA KHARADI for Respondent No. 5

CORAM : MR.JUSTICE A.R.DAVE

Date of decision: 07/10/1999

ORAL JUDGEMENT

The appellant-plaintiff has challenged the order dated 21.5.99 passed on an application below Ex. 5 by the Civil Judge (S.D.) Godhra, district Panchmahals in Special Civil Suit No. 150/96. By virtue of the said order, the application below Ex. 5 filed by the appellant-plaintiff was rejected.

2. The facts leading to the present case are as under:- The appellant is the plaintiff whereas respondents Nos. 1 to 5 are the defendants in Special Civil Suit No. 150/96. Parties to the litigation have been described as they have been arrayed in the trial court. The plaintiff had entered into an agreement for purchase of the land in question by an agreement dated 28.11.83. As per the agreement to sell, a sum of Rs. 10,000/- was paid by the plaintiff to defendants nos. 1 to 4. At the relevant time, it appears that the land in question was new tenure land and therefore the land in question could not have been sold to the plaintiff as the plaintiff was not an agriculturist. Subsequently, defendants Nos. 1 to 4 sold the land in question to defendant No. 5 by a registered sale deed dated 5.7.96. It appears that defendant No. 5 is a bona fide buyer for consideration and the land in question was sold to him under a registered sale deed.

3. At the time of hearing of the application below Ex. 5, learned advocate appearing for the plaintiff was absent and therefore the trial court had proceeded with the matter in his absence. It has been observed by the trial court that several adjournments were granted in favour of the plaintiff and yet the learned advocate had remained absent, ultimately after more than 2 1/2 years the said application was finally heard by the trial court in absence of the advocate appearing for the plaintiff.

4. The trial court has rejected the application below Ex. 5 mainly on the ground that under an unregistered agreement to sell the plaintiff had agreed to purchase the land in question from defendants Nos. 1 to 4 on 28.11.83. The suit was filed in 1996. As the suit had been filed about 13 years later, the trial court came to a conclusion that interim injunction as prayed for by the plaintiff could not have been granted especially when defendant No. 5 was a bona fide buyer for consideration and who was put in possession of the land in question. Moreover, it was not possible for the plaintiff to ask for specific performance of the agreement because the plaintiff was not an agriculturist and as per tenancy laws, the land could not have been transferred to a non-agriculturist. It is pertinent to note here that under the application below Ex. 5, the plaintiff had prayed for an interlocutory injunction to the effect that defendant No. 5 should be restrained from putting up any construction on the land in question and should also maintain status quo. Moreover, the prayer was also to the effect that defendant No. 5

should be restrained from transferring or dealing with the land in question in any manner during the pendency of the trial.

5. Learned Advocate Shri Shethna appearing for ld. advocate Shri P.K. Jani has submitted that the trial court has erred while rejecting the application below Ex. 5. It has been submitted by him that even on the basis of an unregistered agreement to sell a suit can be filed and such a suit is maintainable in the eyes of law. He has further submitted that as per the conditions incorporated in the agreement to sell entered into between the plaintiff and defendants Nos. 1 to 5 dated 28.11.83 certain formalities had to be done by defendants Nos. 1 to 4 before executing the sale deed but as the said formalities had not been done, the period of limitation would not start running against the plaintiff. Thereafter he has submitted that as defendant No. 5, the buyer who purchased the land in question under a registered sale deed, was not an agriculturist, the land in question could not have been transferred or sold in favour of defendant No. 5 by defendants Nos. 1 to 4. It has also been submitted that the presumption drawn by the trial court that the plaintiff is a professor and being a literate person, he ought to have made certain enquiries with regard to revenue entries regarding nature of land etc. are neither justifiable nor relevant.

6. Ld. Advocate Shri Shethna has also relied upon judgements delivered by this court in cases of Nitinkumar Laxmidas alias Lakhubhai and ors. v. Smt. Savitaben Pranshanker and ors., 1996(1) G.L.H. 224, Ibrahim Shah Mohamad and ors. v. Noor Ahmed Noor Mohamed and ors., AIR 1984 Gujarat 126, and in case of Mavjibhai Dharsibhai and ors. v. State of Gujarat and ors., 1994(2) 35(2) G.L.R. 1168.

7. I have heard learned advocate Shri Shethna for the appellant-plaintiff and ld. advocate Shri Kharadi for defendant No. 5.

8. After hearing the concerned advocates and upon perusal of the relevant documents, I do not find any illegality in the impugned order. The trial court is absolutely right in not granting the application below Ex. 5 for the reason that the plaintiff had not taken any action for considerably long period of about 13 years. He had agreed to purchase the land in question under an un-registered agreement dated 28.11.83. After entering into the agreement, it appears that the plaintiff has not taken any action and the first and

final action which the plaintiff had taken was with regard to filing of the suit when he came to know that defendants Nos. 1 to 4 had sold the land in question under a registered sale deed dated 5.7.96.

9. In my opinion, after considerably long period of 13 years, especially when the plaintiff had only agreed to purchase the land in question under an unregistered agreement to sell, and when he was not put in possession by the vendors namely defendants Nos. 1 to 4, no interim injunction could have been granted in favour of the plaintiff by the trial court. On the other hand, defendant No. 5, who is a bona fide buyer under a registered sale deed and for consideration, and who has been put in possession by defendants Nos. 1 to 4, has a right to enjoy the land in question and therefore the trial court rightly did not restrain defendant No. 5 from dealing with or disposing of the suit land.

10. So far as the judgment delivered in case of Nitinkumar Laxmidas (supra) is concerned, it declares that a suit for specific performance under an unregistered agreement to sell is maintainable. In the instant case, the plaintiff has approached this court after about 13 years and that too when a bona fide buyer was put in possession and who had purchased the land under a registered sale deed and therefore in my opinion, prima facie the plaintiff could not have been protected or could not have been granted any interim injunction by an interlocutory order at the threshold of filing of the suit. In my opinion, therefore, the said judgment would not help the plaintiff.

11. In support of his submission that so as to maintain status quo, defendant No. 5 should be prevented from dealing with the suit property, he has relied upon a judgment delivered in case of Ibrahim Shah Mohamad (supra). In the said case, the dispute was amongst co-owners with regard to their undivided share. One of the co-owners was prevented from dealing with his share so as to avoid multiplicity of proceedings. The ratio of the said judgment cannot be taken into account in the present case for the reason that defendant No. 5 is an absolute owner of the land in question as he has purchased the land from the original owners by payment of consideration and under a registered sale deed. In the circumstances, I do not think that the said judgment can be of any help to the learned advocate appearing for the plaintiff.

12. The last judgment which ld. advocate Shri

Shethna has relied upon is in case of Mavjibhai Dharsibhai (supra). The said judgment pertains to transfer of land in violation of provisions of sec. 84C of the Bombay Tenancy and Agricultural Lands Act, 1948. My attention has been drawn to the ratio of the said judgment for the reason that the trial court has observed that, as the plaintiff was not an agriculturist, he could not have purchased the land in question from defendants Nos. 1 to 4. It has been submitted by ld. advocate Shri Shethna that simply because the plaintiff was not an agriculturist, the agreement to sell entered into between the plaintiff and defendants Nos. 1 to 4 would not become void. Such an agreement remains only voidable and it remains in force till it is set aside. The above-referred judgment has been cited by him so as to support his above-referred submission. It has been held in the case referred to hereinabove that the transaction which is in contravention of provisions of the Bombay Tenancy Act would be invalid and not void. It has been therefore submitted that the observation of the trial court that the plaintiff could not have purchased the land in question as the plaintiff was not an agriculturist is not proper. In my opinion, the said argument cannot be accepted for the reason that no suit for specific performance was filed by the plaintiff within reasonable time. As stated hereinabove, the suit was filed after about 13 years and that too after the land in question was sold under a registered sale deed to a bona fide buyer for consideration and who was put in possession.

13. In the above-referred circumstances, I do not see any substance in this appeal and therefore the appeal is rejected with no order as to costs. Notice is discharged.

(hn)